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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,230

05/06/2005

Anthony John Watling

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08/28/2007

CAHN & SAMUELS LLP

2000 P STREET NW

SUITE 200

WASHINGTON, DC 20036

EXAMINER

PARKER, FREDERICK JOHN

ART UNIT

PAPER NUMBER

1762

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/534,230	Applicant(s) WATLING, ANTHONY JOHN	
	Examiner Frederick J. Parker	Art Unit 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5-6-05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. The use of the trademarks calgon, dispex have been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

3. Claim 20 is objected to because of the following informalities: Claim 20: line 1, "any one of" should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1,12,13,14,17,18,21,22,24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claims 1,14 are vague and indefinite because the claims set forth portions of tests for ascertaining liquid adsorptive behavior, the recited limitations omit critical steps which would be

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required to accurately describe the tests (e.g. amount of water added, what constitutes a “dry” sample, what is the orientation of “facing up”, etc).

- Claims 12,21 are vague and indefinite because (1) they utilize a trademark name “calgon” which renders the scope of the claim unascertainable see MPEP 2173.05u. (2) the phrase “or other fluxes” fails to define the scope of the intended fluxes, and (2) the phrase “such as shales” fail to clearly convey the intended “clay suspension sources”.
- Claim 13,22 are vague and indefinite because the relative term “fine” fails to define the workable particle sizes of the sand required to carry out the method.
- Claim 17 is confusing because it depends from claim 14...twice.
- Claims 18,24 are vague and indefinite because the relative term “light” fails to define the intended properties of the cement (e.g. weight, color, etc).\

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-10,14-16,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hooker 1991.

The Hooker article details a method for modifying coloration of in situ masonry by the application of water-based multi-polymeric stains (“same as “tinting composition”) which are absorbed into the porosity of the masonry or mortar to change the coloration appearance of the masonry. The teachings recognize that the process is dependant upon the porosity / absorption characteristics of the product to which the colorant is applied: very hard, smooth materials do not color as well as porous, untextured materials. As shown in the figures the brick with mortar joints (masonry as defined by Applicants on page 5, Spec.) have face surfaces which form an exposed (outer) surface. The result is an external masonry structure with a change or correction in the coloration of the surface after the process.

The reference does not cite the limitations (albeit incomplete) of the tests of the “selecting” or “testing” steps, which are interpreted to be screening tests to ascertain degree of water absorption or wetting. Hooker recognizes the limitations of porosity and texture as previously discussed, and notes that porous materials are more accepting of colorant. Thus the objective of the claimed screening tests are disclosed and it is the Examiner’s position that since the outcomes are the same, the masonry materials of Hooker would have performed successfully in the tests alluded to by Applicants. Thus, the screening tests become a semi-quantitative or qualitative optimization of what is already disclosed by the prior art, and provides a predictable outcome based upon the teachings of the prior art, i.e. higher porosity/ higher absorption/ greater coloration with depth; or vice- versa.

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The presence or use of multiple materials which have the same or different absorption reactivities, surface finishes (same as “textures” discussed in Hooker), color variations, color selection, etc per claims 4-10,15-16 are simply variations ascertainable from the prior art or within the purview of one of ordinary skill to achieve a greater variety of aesthetic looks. Matters related to the choice of ornamentation producing no mechanical effect or advantage considered to constitute the invention are considered obvious and do not impart patentability, In re Seid 73 USPQ 431.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to carry out the method of Hooker on masonry surfaces of different reactivities, finishes/textures, coloration, etc to achieve a greater variety of aesthetic and decorative variations.

9. Claims 11-13,17-18, 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hooker 1991 in view of Salts US 3799716.

Hooker is cited for the same reasons previously discussed, which are incorporated herein. Forming glazed fire brick is not cited. Salts teaches the making of fire brick in which the green brick is spray coated with an aqueous glaze slurry ( same as , or functionally equivalent the “mineral paint” of claim 18 and which would modify exposed surfaces relative to coloration, per claim 17) comprising a dispersant (= surfactant), sand/ silica, pigment, and cement, after which the coated brick is kiln fired under appropriate conditions. It is the Examiner’s position that the use of flux/ cullet and clay would have been obvious formulation variations because they are well-known in the art to be glaze components, and which do not play a critical role in the novelty of the claimed process.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to carry out the method of Hooker on the bricks formed according to the method of Salts because of the expectation of causing a desired coloration of the brick materials of Salts.

10. Claims 26,27,28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hooker.

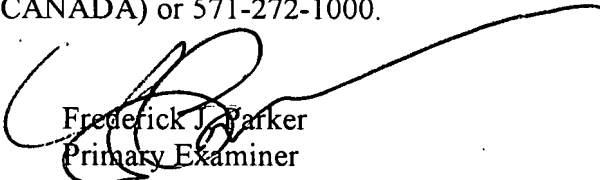
Hooker is cited for the same reasons discussed above. The product would be masonry products with varying degrees of coloration depending on the properties of the masonry material and colorant. Thus the product would be the same as or only slightly different from that of Applicants claims. The patentability of a product is based upon the product itself as claimed, and not upon its method of production. If the product of a product-by-process claim is the same or obvious from a product of the prior art, it is unpatentable even though the processes of making may be different. It is the burden of Applicant to establish an unobvious difference between the claimed product and that of the prior art, MPEP 2113.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick J. Parker whose telephone number is 571/ 272-1426. The examiner can normally be reached on Mon-Thur. 6:15am -3:45pm, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571/272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Frederick J. Parker  
Primary Examiner  
Art Unit 1762

fjp